

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.262 of 2005

Between:

Irigi Laxmamma W/o Irigi Gangaiah
Thirumaligiri Gram Panchayat, Anumala Village, Nalgonda
District

..... PETITIONER

AND

- 1 The District Collector (Panchayat Wing) Nalgonda, Nalgonda District.
- 2 The Divisional Panchayat Officer, Miryalguda Mandal, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or Direction more particularly one in the nature of writ of Certiorari calling for the records pertaining to the proceedings dt 11-01-2005 vide proceedings NO. 690/03-A1 (Pancha) issued by the 1st Respondent and the impugned orders dt 20-10-2004 vide Proceedings No. 690/04-A1(Pts) issued by the 1st respondent and consequently quash the same as being arbitrary, illegal and violative of Article 14 & 21 of the Constitution of India and Section 249 (6) of A.P. Panchayat Raj Act 1994.

Counsel for the Petitioner:MR.HARENDER PRASAD

Counsel for the Respondent Nos.1 and 2: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court at the stage of admission made the following :

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ORDER:

This writ petition is filed aggrieved by the order dated 11.01.2005 passed by the first respondent-District Collector (Panchayat Wing), Nalgonda, Nalgonda District, under Section 249(6) of the A.P.Panchayat Raj Act, 1994, (for short “the Act”), whereunder the petitioner herein was placed under suspension for a period of three months.

I have heard learned counsel for the petitioner and the learned Government Pleader for Panchayt Raj appearing for the respondents.

Learned Government Pleader, at the outset, raised an objection as to the maintainability of this writ petition stating that against the impugned order a revision lies under Section 264 of the Act and without exhausting the said alternative remedy, the petitioner cannot maintain this writ petition.

However, learned counsel for the petitioner submits that since the order was passed by the first respondent without forming an opinion, as required under Sub-Section (1) of Section 249 of the Act, the impugned order is without jurisdiction and therefore, notwithstanding the availability of alternative remedy under Section 264 of the Act, the writ petition is maintainable under Article 226 of the Constitution of India.

I am unable to agree with the said contention of the learned Counsel for the petitioner. Since admittedly the first respondent is competent to pass the order under Section 249(6) of the Act, even assuming that he failed to form an opinion as required under the said provision before passing the impugned order, it cannot be said that the impugned order is without jurisdiction. In case the petitioner succeeds in establishing that the impugned order was passed by the 1st respondent without forming an opinion, at the most it amounts to irregular exercise of jurisdiction.

Whether on that ground, the order of removal is liable to be set aside or not is a question which requires to be decided on appreciation of the material on record by the appropriate forum under the Statute. Hence, without exhausting the alternative remedy available under the Statute, the petitioner cannot maintain this writ petition.

Accordingly, granting leave and liberty to the petitioner to work out the alternative remedy available under the Act, the writ petition is disposed of. It is made clear that in case the petitioner files any revision petition within two weeks from today, the same shall be entertained and appropriate orders be passed in accordance with law, after affording due opportunity to both the parties. No costs.

sh 10.02.2005

To

1 The District Collector (Panchayat Wing) Nalgonda, Nalgonda District.

2 The Divisional Panchayat Officer, Miryalguda Mandal, Nalgonda District.

3 Two C.Cs. to the G.P. for Panchayat Raj and Rural Development, High Court Buildings, Hyderabad.

4 CD copies.